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ISSUES FOR DTERMINATION

1. WHETHER THE WORK PASSES THE REQUIREMENT OF ORIGINALITY

2. WHETHER HE IS ENTITLED TO COPYRIGHT PROTECTION IN NIGERIA AS A GHANIAN

3. WHETHER JOHN CAN SUE OPE FOR INFRINGEMENT.

PRINCIPLE OF LAW

Copyright may be defined as the exclusive right given to an author as regard to his work. copinger and Skone James defined Copyright as one of the main branches of intellectual property which gives the owner the exclusive right to authorise or prohibit certain use of his works by others.

      copyright is a perculiar type of right and is unique to other intellectual property rights in the sense that it does not protect the idea itself but the expression of the idea. for instance, there can be different novels ( expression of ideas) all with the same storyline (idea itself). in such an instance, copyright seeks to protect the novel and not the storyline itself. However, copyright is not a right that encompasses on everything. thie question then arises as to what woud be eligible for copyright protection? by virtue of SECTION 1(1) of the COPYRIGHTS ACT, the works eligible for copyright are; literary works, musical works, artistic works, cinematograph works, sound recording and broadcast. for the purpose of this test, my focus would be on sound recording. it has been defined in SECTION 51 of the COPYRIGHTS ACT as the fixation of a sequence of sound capable of being perceived aurally and may be reproduced. fixation of any kind of sound would qualify like a reading recitation and this fixation can be in analogue or digital.

          after considering the categories of works that can be eligible , the nextquestion is whether it meets the requirement of copyright works. this is provided for in SECTION 1 (2) of the CA. these requirements are; Originality, fixation and qualification of the author. .

                Originality is a very essential requiremnet. it does not mean that the work has to be new, or novelty or results from inventive activity. it would be considered to be original where suffiecient time, skill, labour and judgement has been expended on the work by the author. basically, originality therefore means the work must have originated from the author. it is however limited to literary, musical and artistic works. such works would not be considered eligible if it acks originality as provided in SECRTION 1(2)a. a work that is created from the scratch without refernce is more likely to be original. nevertheless, works drawn from or inspired by other existing works would still qualify. it is immaterial that what the author created alreay exists; what matters is that it was not a mere copying of the existing work.

          fixation is another requirement and by virtue of SECTION 1(2)b literary, musical or srtistic works would only be eligible if it has been fixed in a medium of expression that can be perceived, reproduced or otherwise communicated and through ficxation, copyright can protect the expression of an idea and not the idea itself. case study: Anikulapo Kuti v. Iseli.

      also the qualification of the author is an importnat requirment. before a person can have copyright protection under Nigerian law, there must be a connection between the author and Nigeria in respects to whether he is a nigerian or is just domiciled there, the place of first publication and by virtue of international agreement. therefore, where the author is nigerian or domiciled there (meaning a place he would return to, to stay in.), where the place of first publication is nigeria or by virrtue of international agreement, such work would be eligible for copyright protection.

APPLICATION TO THE SCENARIO.

John is a ghanian domiciled in Nigeria for studies (ABUAD). he made a sound recording of a novel he wishes to write that was inspired by another novel which was stolen by Ope. applying the principles to the given scenario, John's work passes the requiremnt of originality. he is also entilted to copyright under Nigerian law on the grounds that he is domiciled in Nigeria and for the fact that his work is deemed eligible and copyright is a property right by nature, he can sue Ope on grounds of infringement. it is irrelevant that it is published because copyright requires no registration.

in CONCLUSION,

   he would be entitled to damages as the author because his rights have been infringed upon by Ope.